IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 3158 of 1986
Date of decision : 4.4.2007

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Parties Name

State of Punjab through The General Manager, Punjab Roadways, Jalandhar and another

..... Petitioners

vs.

Pritam Singh

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Suveer Sehgal, Additional Advocate General, Punjab for the petitioners

None for the respondent.

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S.N. Aggarwal, J.

Pritam Singh-respondent was working as a Mechanic with the petitioners. On 13.9.1984, he filed an application under Section 15 (2) of the Payment of Wages Act, 1936 (in short the 'Wages Act'), for a direction to the petitioners for refund of the wages deducted illegally. The petitioners in the written statement took the plea that the orders dated 3.8.1978 and 14.9.1978 have been passed against the respondent in accordance with law by which 3 increments of the respondent have been withheld. Therefore, the respondent was not entitled to the wages because of those orders.,

The enquiry files Exhibits R-1 and R-2 were tendered in evidence by both the parties.

Vide order dated 3.9.1985 the learned trial Court accepted the application filed under Section 15 of the Wages Act by the respondent. The appeal filed by the petitioners was also dismissed by the Appellate Court vide order dated 24.5.1986.

Hence, the petition.

The submission of the learned counsel for the petitioners was that this application filed by the respondent under Section 15 (2) of the Wages Act was barred by limitation. It was also submitted that statutory appeal was not filed by the respondent and therefore, the civil suit was not maintainable.

These submissions have been considered.

No doubt, the filing of statutory appeal was one of the remedies available to the respondent, but the non-filing of the statutory appeal does not debar the filing of the civil suit or application under the Wages Act by the respondent against the petitioners to assert that due procedure was not followed while passing the impugned orders or that these orders were illegal. The perusal of the orders dated 3.8.1978 and 14.9.1978 reveals that these orders were passed without following the due procedure. Obviously, the civil Court has rightly exercised its discretion for setting aside the said orders, which have been passed without following the due procedure of law. Therefore, this submission has no force.

The next submission of the learned counsel for the

petitioners was that application filed by the respondent under Section 15 (2) of the Wages Act was barred by limitation. It was submitted that under Section 15 (2) of the Wages Act, such an application can be filed within 12 months. The impugned orders were passed on 3.8.1978 and 14.9.1978, while application under Section 15 (2) of the Wages Act was filed on 13.9.1984. Hence, this application was barred by limitation.

This submission has been considered. The provisions of Section 15 (2) of the Wages Act reveals that the application could be filed within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of wages was due to be made, as the case may be. Now, the question arises, as to when the wages were deducted and the period of limitation is to start from that date.

The perusal of the file reveals that no evidence was produced by the petitioners to show if the order dated 3.8.1978 was implemented or not implemented and when its implementation was made or when this order was communicated to the respondent. There is no presumption as to when this order was made applicable. Therefore, the petitioners have failed to prove if the impugned order dated 3.8.1978 was made effective prior to 12 months from the filing of the application.

Similarly, on 14.9.1978, another order was passed for stoppage of increments with cumulative effect. The petitioners have failed to prove if this order was made applicable and the payment of wages was withheld, if so, when. Therefore, the date of

withholding of the part of salary of the respondent is not proved by the petitioners and therefore, the date of starting point of limitation is not proved by them.

Therefore, not only these orders have been passed without following due procedure but also there is no evidence when these orders were made effective. Therefore, the application filed by the respondent is not barred by limitation.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

4.4.2007
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